IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7410 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PALAK KAILASHCHANDRA JAIN MINOR THRO'HER NATURAL
Versus
UNION OF INDIA

Appearance:
MR HM MEHTA, Sr.Advocate with MR HS MUNSHAW for Petitioner
MR BIPIN I MEHTA for Respondent No. 1
MR RC KODEKAR, AGP for Respondent No. 2 & 3
NOTICE SERVED BY DS for Respondent No. 4

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 27/11/2000

CAV JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this petition under Article 226 of the Constitution, the petitioner, a physically handicapped girl, through her father and natural guardian, has prayed for a writ of mandamus to direct the respondents including the State of Gujarat and the Chairman of the Centralized Degree Admission Committee for Medicine related Courses to provide for atleast 3% reservation of seats in favour of physically handicapped and disabled students for admission to 1st MBBS/1st BDS/1st B.Physio courses at the Government Medical Colleges and Government financed institutes in Gujarat.

2. The petitioner is a physically handicapped person. The petitioner secured 69.6% marks at the Higher Secondary Education (Science Stream) held by the Gujarat Secondary Education Board in March,2000, the results whereof were declared in May, 2000. The petitioner secured about 75% marks in the Science subjects i.e. in Science theory papers and in Mathematics (318 out of 450 marks). The petitioner applied for admission to 1st MBBS course at the Government Medical Colleges and self-financed institutes under the Centralized Admission Scheme for the year 2000-2001. The petitioner's case is that in view of the provisions of Section 39 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 (hereinafter referred to as "the Act"), the respondents were bound to provide for atleast 3% reservation of the seats for the physically handicapped students in the medical/dental and physiotherapy courses just like other professional courses like degree and diploma courses in engineering and pharmacy. The petitioner has, therefore, challenged the admission rules framed by the respondent-State of Gujarat through its Health and Family Welfare Department in so far as such reservation is not made in the medical and para-medical courses in favour of the physically handicapped students. The petitioner has contended that pursuant to the provisions of Section 39 of the Act, the Chief Commissioner for Disabilities under the Government of India has already issued instructions dated 17.8.1999 (Annexure "C" to the petition) to the Commissioner for Disabilities in the Social Welfare Department of the State Government informing that the reservation stipulated by Section 39 of the Act for the disabled students in all Government and Government aided educational institutions covers all technical, professional and other institutions and, therefore, the benefit under Section 39 is meant for the disabled students seeking admissions to medical, engineering, architectural and management, etc. courses. Reliance is

also placed on the letter dated 30.5.2000 (Annexure "D" to the petition) from the Commissioner for Disabilities in the Social Justice and Employment Department of Government of Gujarat to the Chairman of the Centralized Degree Admission Committee recommending the petitioner's case in view of the provisions of the Act.

3. In response to the notice, affidavits in reply have been filed by the Under Secretary to the State Government in the Health Department and by the Dean, B.J. Medical College heading the Centralized Admission Committee for admissions to Medical/Para-Medical courses. The contents of the said affidavits are referred to hereinafter.

4. At the hearing of this petition, Mr HM Mehta, learned Senior Advocate with Mr HS Munshaw for the petitioner has raised the following contentions :-

(i) Section 39 of the Act contains a clear mandate to the State Government to provide for 3% reservation of seats for admissions in educational institutions in favour of physically handicapped persons. There is no discretion left with the respondent-authorities but to provide for such reservation. Hence, the petitioner is entitled to the mandamus as prayed for.

(ii) Rejection of the request for reservation by the Medical Council of India is only recommendatory in nature. It does not absolve the State Government from its liability to comply with the provisions of Section 39 of the Act.

(iii) The reservation of seats for physically handicapped persons, just like reservation of seats for backward classes is a matter of procedure for selection of students and so long as that procedure does not require the authorities to dilute the minimum standards of eligibility for admission to the 1st MBBS course, the State Government cannot plead absence of power to provide for reservation for the physically handicapped persons.

Strong reliance is placed on the decision of the Apex Court in State of M.P. vs. Nivedita Jain, AIR 1981 SC 2045.

(iv) It is always open to the State Government to readjust the percentage of reservation for backward classes, but on the ground that 48%

reservation is already made for backward classes, the legislative mandate contained in Section 39 of the Act cannot be ignored.

4. On the other hand, Mr RC Kodekar, learned AGP appearing for the State Government and the Centralized Admission Committee reiterated at the hearing the following submissions made in the reply affidavits :-

(i) The provisions of Section 39 for 3% reservation in the educational institutions contained in Chapter V of the relate to employment. Hence, such a provision cannot be relied upon as command to the State Government to provide for reservation for admissions to medical courses in favour of physically handicapped students.

(ii) The letter dated 17.8.1999 (Annexure "C") from the Office of the Chief Commissioner for Disabilities is not followed by any letter from the Secretary, Department of Education, Ministry of Human Resource Development in the Government of India though mentioned in the aforesaid letter. In short, no fresh instructions are received from the Government of India.

(iii) In response to the State Government's letter dated 16.3.2000, the Medical Council of India by its letter dated 30.5.2000 (Annexure II to the reply affidavit) has specifically regretted that no reservation for physically handicapped for admission to medical course is permissible under the Regulations framed by the Medical Council of India.

(iv) In any view of the matter, if 3% reservation is made, in view of the existing reservation of 48% seats for Scheduled Castes, Scheduled Tribes and Socially & Educational Backward Classes, the further addition of 3% would take the total reservation to 51% which would exceed the limit of 50% stipulated by the Hon'ble Supreme Court.

5. DISCUSSION :

Whether Section 39 of the Act provides for reservation of seats ?

Section 39 of the Act reads as under :-

"30. All Government educational institutions

and other educational institutions receiving aid from the Government, shall reserve not less than three per cent, seats for persons with disabilities."

By itself, the section provides for reservation of seats for admissions to educational institutions including medical colleges. However, the learned AGP has vehemently submitted that Section 39 falls in Chapter VI of the Act pertaining to employment and that the section does not fall in Chapter V pertaining to education. Hence, the Act does not contain any mandate for reserving seats for disabled persons in the matter of admissions to educational courses much less for admission to medical courses.

6. Before dealing with the rival contentions, it will be useful to refer to the preamble to the Act and some of the relevant provisions. The Act was enacted to give effect to the proclamation on the full participation and equality of the people with disabilities in the Asian and Pacific Region. The statement of objects and reasons reads as under :-

"The meeting to launch Asian and Pacific Decade of the Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asia and Pacific Region, held at Beijing on 1st to 5th December, 1992 adopted the proclamation on the Full Participation and Equality of People with Disabilities in the Asia and the Pacific region. India is a signatory to the said proclamation and it is necessary to enact a suitable legislation to provide for the following :-

(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;

(ii) to create barrier free environment for persons with disabilities;

(iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis, non-disabled persons;

(iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;

(v) to lay down strategies for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and

(vi) to make special provision for the integration of persons with disabilities into the social mainstream."

Section 2(i) defines "disability" as under :-

"Disability" means -

(i) blindness;
(ii) low vision;
(iii) leprosy-cured;
(iv) hearing impairment;
(v) locomotor disability;
(vi) mental retardation;
(vii) mental illness;

Section (k) defines "establishment" as under :-

"establishment" means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in Section 617 of the Companies Act, 1956 and includes Department of a Government.

(emphasis supplied)

Chapter II of the Act provides for constitution and functions of the Central Coordination Committee. Chapter III provides for the constitution and functions of the State Coordination Committee. Chapter IV contains provisions for prevention and early detection of disabilities. Chapter V contains provisions relating to education. In the said chapter, Section 26 requires the appropriate Government and local authorities to provide children with disabilities free education upto the age of 18 years and provide environment to promote the integration of students with disabilities in the normal schools and also to provide for setting up of special schools in Government and private sector for those in need of special education and to equip such special

schools for vocational training facilities. Section 27 contains provisions requiring the Government and local authorities to make schemes and programmes for non-formal education. Section 28 requires the Governments to initiate research for designing and developing new assistive devices, teaching aids etc. as are necessary to give a child with disability equal opportunities in education. Section 29 requires the Governments to set up adequate number of teachers' training institutions to develop trained manpower for schools for disabled children. Section 30 requires the Governments to prepare a comprehensive education scheme providing for transport facilities, supply of books, grant of scholarship, restructuring of curriculum for the benefit of disabled children etc. Section 30 requires all educational institutions to provide amanuensis to students with visual handicap.

Chapter VI with the title "Employment" contains sections 32 to 41. Sections 32 and 33 have a bearing on the controversy and, therefore, they are quoted verbatim.

"32. Identification of posts which can be reserved for persons with disabilities.- Appropriate Governments shall -

(a) identify posts, in the establishments, which can be reserved for the persons with disability;

(b) at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology.

33. Reservation of posts. - Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent, for persons of class of persons with disability of which one per cent, each shall be reserved for persons suffering from -

(i) blindness or low vision;
(ii) hearing impairment;
(iii) locomotor disability or cerebral palsy;

in the posts identified for each disability;

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

(emphasis supplied)

Section 34 provides for setting up of special Employment Exchange for disabled persons. Section 35 empowers the authorized officer to inspect record or documents in possession of any establishment. Section 36 provides that when vacancies reserved for disabled persons are not filled in on account of non-availability of such person or for any other sufficient reasons, such vacancy shall be carried forward in the next recruitment year and in the next year also if a suitable person with disability is not available, it may first be filled up by interchange amongst the three categories (mentioned in Section 33) and only when there is no person with disability available for the post in that year, the employer may fill up the vacancy by appointment of a person other than a person with disability. Section 37 requires the employer to maintain records in relation to the disabled persons. Section 38 required the Government and local authorities to formulate schemes for ensuring employment of persons with disabilities. Section 39 reads as under :-

"39. All educational institutions to reserve seats for persons with disabilities.- All Government educational institutions and other educational institutions receiving aid from the Government shall reserve not less than three per cent seats for persons with disabilities."

Section 40 reads as under :-

"40. Vacancies to be reserved in poverty alleviation schemes.- The appropriate Governments and local authorities shall reserve not less than three per cent, in all poverty alleviation schemes for the benefit of persons with disabilities."

Section 41 requires the Governments and local authorities, within the limits of their economic capacity

and development, to provide incentives to employers both in public and private sectors to ensure that at least five per cent of their work force is composed of persons with disabilities.

Chapter VII of the Act provides for affirmative action requiring the Governments to provide aids and appliances to disabled persons and also to frame schemes for the preferential allotment of land at concessional rates to disabled persons for certain specified purposes. Chapter VIII contains provisions for non-discrimination in transport, on the road, in the built environment and in Government employment.

Chapter IX requires the Government to promote and sponsor research, inter alia, in the areas of prevention of disability, rehabilitation including community base rehabilitation, development of assistive devices including their psycho-social aspects, etc. Section 49 also requires the Governments to provide financial assistance to universities, other institutions of higher learning, professional bodies and non-government research institutions for undertaking research for special education, rehabilitation and manpower development.

Chapter X contains provisions of recognition of institutions for persons with disabilities.

Chapter XI provides for institution for persons with severe disabilities and Chapter XII provides for appointment and functions of the Chief Commissioner for disabled persons.

Chapter XIII contains provisions relating to social security and also for undertaking rehabilitation of persons with disabilities.

Chapter XIV contains miscellaneous provisions including the power to make rules.

7. A review of the aforesaid provisions and particularly the provisions contained in Chapter V with the title "Education" (Sections 26 to 31) and in Chapter VI- "Employment" (Sections 32 to 41) clearly indicates that the provisions in Chapter V do not exhaust the benefits which the Parliament intended to confer on the disabled persons. Sections 26 to 31 of the Act merely contain provisions with respect to the extra assistance which would be required to be given to disabled students with special reference to their disabilities. Thus, Chapter V is concerned with assisting persons with

disabilities for improving their abilities by special assistance or by removal of barriers. On the other hand, the provisions of Chapter VI of the Act require the State to confer certain advantages upon disabled persons in order to enable them to have equal opportunities with persons without disabilities. Hence, merely because Section 39 falls in Chapter VI with the heading "Employment", it does not mean that Section 39 is concerned with employment. Sections 32 and 33 already quoted hereinabove and the consequential/ ancillary provisions contained in Sections 34 to 38 are intended to empower disabled persons in the employment market. The wide definition of establishment in Section 2(k) provides that establishment means any statutory corporation or a body owned or controlled or aided by the Government or a local authority or a Government Company and also includes departments of a Government. For employment in these establishments, reservation is not as a matter of course in respect of all posts, but the Government is required to identify posts which can be reserved for persons with disability and then the Government is required to appoint, atleast in 3% of the vacancies, persons with disabilities.

Looking to the nature of the functions attached to a post, the post will be identified for three categories of disabilities mentioned in Section 33 of the Act.

8. Of course, the Government has been empowered to exempt any establishment from the provisions of section 33, having regard to the type of work being carried on in any department or establishment. The learned AGP has not pointed out any notification exempting the medical colleges or hospitals from the operation of this Act with the result that the reservation of 3% of vacancies will apply to the hospitals and medical colleges run by any institution which falls in the aforesaid wide definition of establishment in Section 2(k). Could it be the intention of the Parliament that there shall be reservation of vacancies in the posts of professor in medical colleges or doctors in hospitals, (of course subject to the rider about the nature of the disability and the nature of the functions attached to a post), but the Parliament did not intend such reservation to be made while granting admissions to medical colleges. The provisions of Section 39 are very clear and the legislative mandate is quite positive and emphatic that all Government educational institutions and other educational institutions receiving aid from the Government shall reserve atleast 3% seats for persons

with disabilities. The legislature has consciously used the word "seats" in respect of educational institutions as contrasted with "posts" / "vacancies" for employment. In State of of Assam vs. Kanak Chandra, AIR 1967 SC 884, a Constitution Bench of the Apex Court explained the expression "post" and held that a post is a service or employment. A person holding a post under a State is a person serving or employed under the State. There is a relationship of master and servant between the State and a person said to be holding a post under it. A post is a an employment, but every employment is not a post. In view of these two different expressions - "seats" on the one hand and "post" / "vacancy" on the other hand - with well known connotations, we have no doubt that through Section 39, the legislature has issued a mandate to the Government educational institutions and to other educational institutions receiving aid from the Government including the Government medical colleges and Government aided medical colleges to reserve atleast 3% of seats for students with disabilities. It was in view of the aforesaid clear language of the enactment that the Chief Commissioner for Disabilities in the Government of India issued the letter dated 17.8.1999 (Annexure "C") which reads as under :-

> "Since this section (Sec. 39) falls under the Chapter of employment, there have been many doubts regarding this provision. In order to reach a common understanding of Sec. 39, Chief Commissioner, Disabilities held a meeting with Secretary, Law, Education and SJ & E.
>
> You will be pleased to learn that issue has since been clarified and now Secretary, Department of Education, M/s Human Resource Development, Govt. of India would issue fresh instructions to all the State Education Secretaries, etc. regarding Sec. 39 which stipulated reservation of seats for the disabled students in all Govt. and Govt. aided educational institutions. This would cover all technical professional and other institutions. Therefore, the benefit under Sec. 39 are meant for the disabled students seeking admission to Medical, Engineer, Architectural and Management etc. course."

9. It is true that the letter contemplates issuance of subsequent instructions by the Secretary, Department of Education to all Education Secretaries and the learned AGP for the State Government submits that no such

instructions have been received, but looking to the mandatory nature of the legislative command contained in Section 39 of the Act, we do not think that non-issuance of any instructions by the Secretary in the Department of Education of the Government of India can deprive the persons with disabilities their right to claim reservation for admissions to medical colleges under Section 39 of the Act.

9A. Before concluding the discussion on this issue, it would be pertinent to note that the State Government itself has provided for reservation of 3% seats in favour of disabled persons for admissions to degree and diploma courses in engineering and pharmacy in the State of Gujarat. It clearly indicates that the State Government itself has placed the same interpretation on the provisions of Section 39 of the Act which is canvassed by the petitioner. Moreover, 3% seats are reserved for admissions to medical colleges in many other states like Uttar Pradesh, Rajasthan, Andhra Pradesh and Maharashtra as per the particulars produced by the petitioner. The above aspects, though not conclusive, do support the interpretation being placed by us on the provisions of Section 39 of the Act.

10. The learned AGP has, however, submitted that even if Section 39 of the Act is held to contain such a mandate to provide for reservation in favour of disabled persons, the State Government is also bound by the statutory regulations framed by the Medical Council of India under Section 33 of the Medical Council of India Act, 1956. The learned AGP submitted that the regulations framed by the Medical Council for admissions to first MBBS course do not contain any provision for reservation for disabled persons and that far from absence of any such provision, in view of the doubt entertained by the State Government, when the matter was referred by the State Government, the Medical Council of India replied the query in the negative vide letter dated 30.5.2000, which reads as under :-

> "With reference to your letter No. MCG-1098-3750-J, dated 16th March, 2000, I am to state that the matter with regard to reservation of 3% seats in medical colleges for students with disabilities as per Section 39 of the `Persons with disabilities (equal opportunities, protection of right and full participation) Act, 1995 of the above mentioned Act with particular was considered by the General Body of the MCI at

its meeting held on 5.11.99. The Council decided that the constitutional reservation for admission to MBBS and postgraduate medical courses shall be followed and consideration of reservation on any (other) ground will not be accepted.

In the circumstances it is regretted that no reservation for physically handicapped for admission to medical courses is permissible under the Regulations framed by the MCI and reiterated by the General Body of the Council as stated above."

It is submitted that in view of the aforesaid stand, the State Government will not be justified in making any reservation for disabled persons in the matter of admissions to first MBBS course/first BDS and other para medical courses.

11. Though the objection may seem to be formidable at the first blush, the correct appreciation of the relevant statutory provisions as interpreted by the Apex Court leads us to the conclusion that the objection raised by the Government is not sustainable.

In State of M.P vs. Nivedita Jain, AIR 1981 SC 2045, in para 20 of the judgment, the Apex Court considered the regulations framed by the Council in the following phraseology :-

I. Admission to the Medical course : No candidate shall be allowed to be admitted to the Medical Curriculum proper until:

(i) he has completed the age of 17 years....

(ii) he has passed one of the six qualifying examinations such as H.Sc.

II. Selection of students :- The selection of students to a medical college should be based solely on merit of the candidate and for determination of merit, the criteria have been laid down.

After considering the aforesaid language, the

Apex Court made the following observations :-

"We are of the opinion that the use of the words "should be" in Regulation II is deliberate and is intended to indicate the intention of the Council that it is only in the nature of a recommendation. Regulation I which lays down the conditions or qualifications for admission into Medical Course comes within the competence of the Council under S. 33 of the Act and is mandatory and the Council has used language to manifest the mandatory character clearly, whereas Regulation II which deals with the process or procedure for selection from amongst eligible candidates for admission is merely in the nature of a recommendation and directory in nature, as laying down the process or procedure for selection for admission of candidates out of the candidates eligible or qualified for such admission under Regulation I. Regulation II recommending the process of selection is outside the authority of the Council under S. 33 of the Act and the Council has advisedly and deliberately used such language in Regulation II as makes the position clearly and places the matter beyond any doubt."

(emphasis supplied)

12. Upon a review of the provisions of the Indian Medical Council Act, 1956, the Apex Court has again held in Ajay Kumar Singh vs. State of Bihar, (1994) 4 SCC 401 as under :-

"A review of the provisions of the Act clearly shows that among other things, the Act is concerned with the determination and coordination of standards of education and training in medical institutions. Sections 16, 17, 18 and 19 all speak of "the courses of study and examinations to be undergone" to obtain the recognized medical qualification. They do not speak of admission to such courses. Section 19A expressly empowers the council to "prescribe the minimum standards of medical education" required for granting undergraduate medical qualification. .... Clause (j) of Section 33 particularizes the subjects with respect to which Regulations can be made by the council. It speaks of the courses and period of study and the practical training to

be undergone by the students, the subjects of examination which they must pass and the standards of proficiency they must attain to obtain the recognized medical qualifications but it does not speak of admission to such courses of study. Indeed, none of the sections aforementioned empower the council to regulate or prescribe qualifications or conditions for admission to such courses of study. No other provisions in the Act does. It is thus clear that the Act does not purport to deal with, regulate or provide for admission to graduate or postgraduate medical courses."

(emphasis supplied)

13. Coming to the specific question of reservations in the matter of admissions to medical courses in Ajay Kumar Singh's case (Supra), the Apex Court was concerned with the question of reservations of seats in postgraduate medical courses. The percentage of reservation was as under :-

Scheduled Castes - 14%
Scheduled Tribes - 10%
Extremely backward classes - 14%
Backward classes - 9%
Ladies - 3%

The Medical Council of India took the stand that there should be no reservation of any kind in the matter of admission to postgraduate medical courses and that admissions should be made solely and exclusively on the basis of merit and merit alone; the regulations made by the Indian Medical Council with the previous sanction of the central Government say so that the Regulations being a species of delegated legislation bind all the institutions imparting medical education; in the face of these Regulations, it was not open to the State of Bihar to provide for such reservation under any executive order. The Medical Council also contended that Entry 66 of List I covers the regulation of admissions to the medical courses also and it would not fall in Entry 25 of List III in the Seventh Schedule. The Apex Court observed as under:-

"While Regulation of admission to these medical courses may be incidental to the power under Entry 66 List I, it is integral to the power contained in Entry 25 List III. The State which

> has established and is maintaining these institutions out of public funds must be held to possess the power to regulate the admission policy consistent with Article 14. Such power is an integral component of the power to maintain and administer these institutions. Be that as it may, since we have held, agreeing with the holding in Nivedita Jain that Entry 66 in List I does not take in the selection of candidates or regulation of admission to institutions of higher education, the argument of Shri Salve becomes out of place. The States must be held perfectly competent to provide for such reservations."

(emphasis supplied)

14. The aforesaid review of the authorities on the subject leaves no room for doubt that while the qualifications laid down by the Medical Council for admission to the first MBBS course are mandatory, the admissions to such courses are to be regulated by the State and that the State is not precluded from providing for reservation of seats subject to the constitutional limitations. In the instant case, there is a legislative mandate from the Parliament to provide for reservation for disabled persons to the extent of 3% of seats in all educational institutions, owned or aided by the Government. Hence, the objection raised by the Government on the ground of the letter dated 30.5.2000 from the Medical Council of India is untenable. The State Government shall have to provide for reservation for disabled persons.

15. At this stage, however, two further questions are required to be considered. In the first place, it has been contended by the learned AGP that a disabled person may not be in a position to undergo the course of medical studies because the nature of disability may be such that it may not be possible for such disabled person to undergo the course of studies alongwith other students who are not disabled.

There is some substance in this submission. Hence, it will be open to the authorities to confer discretion on the body granting admissions to determine whether looking to the nature and degree of disability a particular candidate would be in a position to undergo the course of study and practise at least as a physician, but that cannot be a ground for negativing the claim of disabled persons as a class for reservation of 3% seats in medical colleges on the strength of Section 39 of the

Act. It goes without saying that amongst the disabled persons who are found to be fit for getting the benefit of 3% reservation of seats, their inter se claim has to be considered on the basis of their merits.

16. Secondly, it has been contended by the learned AGP that if 3% seats are reserved for disabled persons, the total percentage of reservation will exceed 50% and the State cannot be compelled to violate the principle laid down by the Apex Court that reservations shall not exceed 50% of the seats in the concerned course of study.

There is some substance in this argument also, but all that it means is that total reservation shall not exceed 50%. We are informed that the present percentage of seats reserved in the first year medical course is as under :-

Scheduled Tribes	14%
Scheduled Castes	7%
Socially & Educationally Backward Classes	27%
Total	48%

In view of the above, the State Government will obviously have to redetermine the percentage of seats to be reserved for various categories so as to ensure that while 3% seats are reserved for disabled persons as per the mandate of the Parliament, the remaining 47% seats are reserved for SC/ST and other backward classes. That is, however, a matter of policy and, therefore, the State Government shall have to undertake that exercise. But, considering the fact that the admissions to first year medical/first year dental and first year physiotherapy courses for the academic year 2000-2001 are already over, we direct the State Government to undertake this exercise for the academic year 2001-2002 onwards, but the exercise shall be undertaken well in time before the admission process for the said year commences. We expect the Government to take, latest by 31.3.2001, the necessary policy decision in light of the observations made in this and preceding paragraphs of this judgement.

16. We may also note at this stage that by an interim order dated 13.9.2000, this Court had directed that in the event of the petitioner succeeding in the petition,

the respondents shall accommodate the present petitioner against one seat, if necessary, by creating one. We are informed that respondent Nos. 3 and 4 have kept one seat vacant. Hence, the respondents shall fill in the said seat in the first MBBS course from amongst the disabled persons with the discretion resting with respondent No. 4 to consider the question whether the disabled candidate whose case is being considered for admission in the first MBBS course is in a position to undergo the medical course and will be able to discharge the functions of at least a physician.

17. The petition is accordingly allowed in terms of the directions contained in paragraphs 14 to 16 hereinabove.

18. Rule is made absolute to the aforesaid extent with no order as to costs.

(D.M. Dharmadhikari, CJ)

(M.S. Shah, J.)

sundar/-